

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

OMAR STRATMAN,

Plaintiff,

V.

LEISNOI, INC., KONIAG, INC., and
DIRK KEMPTHORNE, Secretary of the
Interior,

Defendants,

KONIAG, INC.,

Counter-claimant,

Case No.: 3:02-cv-0290 (JKS)

V.

OMAR STRATMAN,

Counter-claimed
Defendant.

THIRD AMENDED COMPLAINT

COMES NOW Omar Stratman, by and through his attorneys of COMES NOW Omar Stratman, P.C., and complains and alleges against Defendants, and them, as follows:

Introduction

- This action is an Administrative Procedure Department of Interior's decision to certify Village, and constitutes a continuation of the proceedings in Village, and constitutes Interior, Leisnoi, Inc., and Koniag, Interior, Leisnoi

MICHAEL, below, that action culminated in an Orderbelow, that action culminated in

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Land Appeals (hereinafter "IBLA") to adjudicate Stratman's challenge and redetermine adjudicated proceedings, which included a formal adjudicatory hearing in which it determined that Leisnoi was not qualified for certification as an eligible Native Village. The proceedings have now been completed. In accordance with the Court, this new action has been filed in order to bring Stratman's case back before the Court for final determination of his APA claim.

General Allegations

2. Omar Stratman (hereinafter "Stratman") is a resident of the Village of Leisnoi, Alaska, within the District of Alaska.
3. Dirk Kempthorne is the current Secretary of the Department of the Interior (hereinafter "the Department").
4. Leisnoi, Inc. (hereinafter "Leisnoi") is a Native Village of Alaska. As a consequence of the Department's certification of the alleged village as an eligible Native Village under Section 11(b)(3) as an eligible Native Village under the Settlement Act (ANCSA), 43 U.S.C. § 1610(b)(3).
5. Koniag, Inc. (hereinafter "Koniag") is a Native Village of Alaska. ANCSA for Native villages in the Kodiak archipelago, in which Leisnoi is a member.
6. This Court has jurisdiction, and venue is proper, pursuant to 28 U.S.C. § 1331.
7. The Court has the authority to review the Department's decision and to grant the relief requested herein, pursuant to 5

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28 U.S.C. § 2201 (declaratory relief), and 28 U.S.C. § 1651 (injunctive relief).

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The Proceedings in Stratman I

8. In 1973, Leisnoi filed an application with the Department for an eligibility to receive ANCSA benefits as an eligible Native Village. In Section 11(b)(3), 43 U.S.C. § 1610(b)(3), and the Department's regulations, and the Department's regulations, the and the Department's regulations regarding Leisnoi's application and its qualifications for eligibility to be qualified for a Native Village. Notice of the Department's decision was published in the Alaska Gazette and several Alaska newspapers. Following the Department's decision, several Alaska newspapers had been filed by other parties, the Department had been filed by other parties, the Department issued a Certificate of Eligibility for Leisnoi as an eligible Native Village. Leisnoi as an eligible Native Village. Leisnoi's proceedings to Stratman, even though Stratman held record interests, as a federal grazing leaseholder, in some of the land, Leisnoi did not receive actual notice of the pendency of the proceedings, and Leisnoi did not file a protest or participate in any administrative proceedings relating to Leisnoi's application.
9. As will appear below, Leisnoi's certification as an ANCSA eligible Native Village is contrary to law. As a direct and proximate result of the Department's certification, Leisnoi received land, money, and other benefits to which it was not entitled.
10. To the best of Mr. Stratman's knowledge, Leisnoi's certification as an ANCSA eligible Native Village, or other benefits directly because of Leisnoi's wrongful certification.

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11. In July 1976, Stratman (and other plaintiffs) filed in the District of Alaska challenging the status of Leisnoi as an eligible Native Village. Stratman vs. Secretary of Interior, Leisnoi, Inc., and Koniag, Inc., Case No. A76-132 CV (JKS) (hereinafter Stratman I). The complaint in Stratman I alleged that Leisnoi did not meet ANCSA's requirements for certification as an eligible Native Village, that the Department had conducted an inadequate investigation regarding Leisnoi's status, and that the Department had wrongfully certified Leisnoi as an eligible Native Village. The complaint sought to vacate Leisnoi's certification as an eligible Native Village, to enjoin the Federal government from issuing any land patents to Leisnoi, and to declare null and void any conveyances made to Leisnoi. A true and correct copy of the First Amended Complaint in Stratman I is attached as Exhibit 1.

12. The litigation in Stratman I wound through a number of appeals, a failed settlement, and ultimately, an order remanding the proceedings to adjudicate Stratman's challenge to Leisnoi's eligibility. See orders at Docket 240, orders at Docket 292 (p. 3), Docket 300. A true and correct copy of the District Court's docket entries in Stratman I is attached hereto as Exhibit 2.

13. On October 26, 1978, the District Court dismissed the complaint in Stratman I on the grounds that Stratman (and the other plaintiffs) lacked standing, and had no interest in the subject matter.

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 other things, the Ninth Circuit determined that Stratman had standing that Stratman h
 action as a recreational user of the lands action as a recreational user of the lands tha
Id. at 1324. The Cou. The Court also deter. The Court also determined that Stratman
 receive actual notice from the Department of the pendency of its proceceive
 regarding Leisnoi s regarding Leisnoi s regarding Leisnoi s application for eligibi
 been originally entitled to notice and an opportunity to participate in the administrative
 proceedings. Id. at 1326. After noting that Stratman was seeking a trial *de novo* in
 the District Court the District Court to determine the issue of Leisnoi s eligibi
 Circuit remanded, instructing the District Court to apply the princCircuit remanded
 and determine whether Stratman should be allowed to litigate [his challengand det
 judicial forum. Id. at 1326.

14. In 1982, following the Ninth Circuit s decision In 1982, following the Ninth Circuit s
 into a settlement and ainto a settlement and a stipulated dismissal. At the timeinto a set
 Koniag had merged into a single corporation. Koniag had merged into a single
 agreement, the merged Leisnoi/Koniag agreed to sell agreement, the merged L
 surrounding his ranch from surrounding his ranch from
 transaction was to take place within thirty days following Leisnoi/Koniag s receipt
 land patents. On November 21, 1985, the land patents were issued. Fou
 Leisnoi repudiated its obligations under the Leisnoi repudiated its obligations under

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declared *void ab initio* pursuant to a shareholder's action against Leisnoi and Koniag in Alaska state court for specific settlement agreement. After prevailing in the trial court, the Alaska Supreme Court ultimately determined that the settlement was *void ab initio*. Leisnoi, Inc. v. Stratman, 835 P.2d 1202 (Alaska 1992).

15. On March 5, 1993, Stratman filed a motion to Stratman and reopen and reopen the action. The District Court denied the motion. The motion was appealed to the Ninth Circuit. In a memorandum decision issued on October 1, 1994, the Ninth Circuit reversed and remanded with instructions for the District Court to vacate the judgment of dismissal and reopen the action. A copy of the Ninth Circuit's decision is attached as Exhibit 4. The District Court entered an order reopening the action.
16. On May 11, 1995, the District Court issued a Scheduling Order (Docket No. 100) which identified five threshold issues to be briefed by the parties. If the court did not resolve the action on one of the five issues, the court was to remand the matter to the Interior Board of Land Appeals for a determination of Leisnoi's eligibility. Included in the threshold issues was whether Leisnoi was barred due to his failure to exhaust his administrative remedies. Congress had legislatively ratified Leisnoi's status as an eligible Native American in enacting the provisions in the National Conservation Act (ANILCA). A true Conservation

MICHAEL J. STRATMAN, Esq. Exhibit 4.

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18. On November 21, 1995, the District Court entered a subsequent order denying two subsequent motions. The order concluded denying two subsequent motions and entered judgment remanding the case to the Interior Board of Land Appeals (IBLA) in accordance with the Court's order of September 13, 1995. A formal judgment was entered remanding the case to IBLA. True copies of the District Court's order and judgment of remand are attached hereto as Exhibits 6 and 7. (Docket 309 and 310, respectively.)

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19. On September 25, 1996, the District Court granted Stratman's motion to preliminarily enjoin Leisnoi from logging the land under ANCSA pending the determination of the court. The court indicated that its judgment of remand had been intended to indicate that the court would retain jurisdiction, rather than retaining jurisdiction, and that Stratman's motion was to be heard by the District Court for final determination, after the completion of the District Court proceedings, by filing a new action. A transcript of the proceedings is attached hereto as Exhibit 8. (Docket 329.)

The Remanded Agency Proceedings

20. On September 25, 1996, IBLA acknowledged receipt of the letter and docketed the matter as Case No. IBLA 96-152.

21.	On November 10, 1997, IBLA referred the matter to the assignment of an ALJ to convene a hearing for the purpose of determining whether Woody Island meets the legal requirements for village. The case was subsequently assigned to Administrative Law Judge C. Sweitzer.
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22. Judge Sweitzer conducted a formal adjudicatory hearing August 3, 1998 to August 14, 1998 in Anchorage, Alaska; the second week was held in Anchorage, Alaska. The hearing included an on-site inspection of the site of the alleged violation. The parties were accorded the opportunity to file post-hearing briefs.

MICHAEL responded repty. briefs.

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23. On October 13, 1999, the ALJ issued a one-hundred-page decision in which he determined that Leisnoi did not satisfy ANCSA's requirements as an unlisted Native Village. Among other things, the ALJ found: 1) that Leisnoi did not have 25 or more Native residents on April 1, 1970; 2) that Leisnoi did not have 25 or more Native residents at an identifiable physical location evidenced by occupancy consistent with identifiable cultural patterns and life-style; 3) that Leisnoi did not use the alleged village during 1970 as a place of residence or of time; and 4) that Leisnoi was not unoccupied in 1970 due to one or more acts of God or governmental authority occurring within the preceding ten years. A true and correct copy of the ALJ's Recommended Decision is attached hereto as Exhibit 9.

The parties were accorded the opportunity to file Recommended Decision, and to brief any party on the issue of whether Congress legislative the issue Native Village by enacting ANILCA Section 1427.

25. On October 29, 2002, IBLA issued a reported decision, On October 29, 2002, IBLA issued its decision, the Board adopted the its decision, the Board adopted the Aits decision stating that [w]e have reviewed the objections to stating that [w]e have reviewed the objections to decision filed by the parties and we find decision filed by the parties and we find no error with which we agree. 157 IBLA at 157 IBLA at 320. A true and accurate copy of the decision is attached hereto as Exhibit 10.

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26. IBLA also determined that Congress did not legislatively ratify Leisnoi's status as an eligible Native Village in ANILCA Section 142. IBLA determined that Leisnoi's status had not been determined by the Department's Tribal Entities List, as it had been at IBLA at 315-319.
27. By letter dated December 27, 2002, Leisnoi asked the A.A. Norton to exercise [her] authority. A.A. Norton to exercise review and reverse, on various grounds, IBLA's decision of October 29, 2002.
28. On or about December 20, 2006, Secretary Kempthorne issued a similar Decision adopting the reasoning of Deputy Solicitor Lawrence in a memorandum dated December 11, 2006. The Secretary's review of the 2006 Secretary's review of §2651.2(a)(5); and that §1427 of ANILCA determination regarding Leisnoi, thus is attached hereto as Exhibit 11. The decision and is attached lodged with the Court at Document No. 96 on or about January 8, 2007.

Claim for Relief

29. This action constitutes a continuation of the pleadings, proceedings, and orders issued therein remain the pleadings, proceedings, and the Court in this action, under the doctrine of the law of the case.
30. As a result of the Department's As a result of the Department's As a result of the

MICHAEL LESNOI, Petitioner, v. Department of Corrections, Respondent. Determination of Leisnoi's eligibility in the remanded agency proceeding.

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31. Stratman is entitled to a judgment affirming IBLA's decision.
32. Stratman is entitled to a judgment enforcing IBLA's decision.
33. Stratman is entitled to a judgment setting aside the Department's certification of Leisnoi as an eligible Native Village based on Leisnoi's eligibility.
34. Stratman is entitled to a judgment restoring the United States title to the lands that were conveyed to Leisnoi under ANCSA, were conveyed to Leisnoi, and have been conferred on Leisnoi or Koniag as an eligible Native Village.
35. Stratman is entitled to an award of his costs and attorney's fees incurred with this action, including the costs and fees he incurred with this action, including Stratman I, in, in the remanded agency proceedings, and in other, in the remanded proceedings that were related to his case. Such award is authorized by the Act, 28 U.S.C. § 2412.

WHEREFORE, Stratman prays for relief as follows:

1. For a Judgment affirming IBLA's decision that Leisnoi did not satisfy ANCSA's requirements for certification as an eligible Native Village;

MICHAEL requirements for certification as an eligible Native Village;

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2. For a Judgment setting aside the Department's certification of Native Village;
3. For a Judgment vacating any land patents issued of Leisnoi's certification as an eligible Native Village;
4. For a Judgment awarding the United States of America, or the value of any benefit received by Leisnoi and/or the value of any benefit received Leisnoi's certification as an eligible Native Village;
5. For a Judgment imposing a constructive trust for the benefit of the all assets acquired by Leisnoi and all assets acquired by Leisnoi and Koniag as an eligible Native Village;
6. For a Judgment awarding Stratman his connection with this action, including his costs and fees incurred in the proceedings that were related to his case.
7. For such other and further relief as the Court deems appropriate.

RESPECTFULLY submitted this 16th day of February, 2007.

s/ Michael J. Schneider
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CERTIFICATE OF SERVICE

I hereby certify that *OMAR STRATMAN S
THIRD AMENDED COMPLAINT* was served electronically
on the 16th day of February, 2007, on Bruce M. Landon,
R. Collin Middleton, and John R. Fitzgerald.

s/Michael J. Schneider

MICHAEL J. SCHNEIDER, P.C.
ASSISTANT CLERK OF COURT, 24500106

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